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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

WILLIAM VASQUEZ MARTINEZ, Petitioner, vs. MIKE MCDONALD, WARDEN, SOLANO STATE PRISON, Respondent.	**Case No.: C08 05232 RMW** DECLARATION OF COUNSEL IN SUPPORT OF PETITIONER'S REQUEST FOR STAY OF FEDERAL PROCEEDINGS PENDING PROPER EXHAUSTION OF STATE HABEAS REMEDIES

I, RICK HOROWITZ, declare:

1. I am the attorney of record retained to represent petitioner, WILLIAM VASQUEZ MARTINEZ, in the instant proceedings.
2. I was retained by the petitioner to assist him in filing a federal petition for a writ of habeas corpus.
3. I subsequently reviewed several thousand pages of trial transcripts provided to me by petitioner, and began to work on the federal writ.
4. I subsequently came to realize that important state remedies had not been raised in the state courts in California.
5. Specifically, Claim 4 of the federal Petition for Writ of Habeas Corpus, regarding gang evidence which did not satisfy the statutory requirements for conviction and Claim 5 regarding the due process violations for using gang evidence as character

evidence do not appear to have been exhausted at the state level; however, Claims 1 (failure to preserve exculpatory evidence), 2 (ineffective assistance of counsel for failing to request preservation of evidence), and 3 (erroneous giving of CALJIC 3.02 natural and probable consequences instruction) appear to have been exhausted by inclusion in the Petition for Review to the California Supreme Court.

6. Petitioner therefore intends to file a new Petition for Writ of Habeas Corpus in the California Supreme Court raising the necessary legal arguments. Unless this Honorable Court grants this requested stay, Petitioner will be severely handicapped in his ability to fully address the applicable Federal claims relating to Claims 4 and 5 based on petitioner's previously-filed California Supreme Court Petition for Review (of his appeal), insofar as it is likely that not all aspects of the Federal claims were properly or adequately exhausted.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 13, 2009, in Fresno, California.

/S/_________________________
Rick Horowitz
Attorney for Petitioner,
William Vasquez Martinez

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